

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF ILLINOIS
3 EAST ST. LOUIS DIVISION
4 CASE NO. 3:15-cv-1253-NJR-DGW

5 RYAN RUDELL

PLAINTIFF

6 v.

7 MARATHON PETROLEUM CO., LP,
MARINE TRANSPORTATION

DEFENDANT

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11
12 VIDEOCONFERENCE DEPOSITION OF
13 CAPTAIN MICHAEL WAYNE SCOTT
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16
17 Ashland, Kentucky
18 July 13, 2016
19

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21 Lisa Larson, FCRR, RPR
22 Federal Certified Realtime Reporter
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Page 2

Pursuant to Notice, the videoconference deposition of CAPTAIN MICHAEL WAYNE SCOTT was taken on behalf of the Plaintiff before Lisa Larson, FCRR, RPR, and Notary Public in and for the Commonwealth of Kentucky at Large, at Holiday Inn Express & Suites, Meeting Room, 13131 Slone Court, Ashland, Kentucky, on July 13, 2016, commencing at the hour of 10:02 a.m.

The deposition was taken for all purposes permitted under the Federal Rules of Civil Procedure, including use as evidence at the trial of this matter.

INDEX

WITNESS: CAPTAIN MICHAEL WAYNE SCOTT

EXAMINATION BY:

Mr. O'Bryan

Mr. Raymond Massey

Mr. O'Bryan

REPORTER'S CERTIFICATE

ERRATA SHEET

Page

5

47

66

76

77

EXHIBITS

NO.	DESCRIPTION	
Exhibit 1	Various documentation related to incident and referenced herein	75

(The original exhibit was attached to the original transcript and a copy was provided to counsel)

Page 3

A P P E A R A N C E S

COUNSEL FOR THE PLAINTIFF:

(By videoconference)

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ALSO PRESENT:

Tara M. Griffith, Esq.

Marathon Petroleum Company, LP

Adrian J. Pringle, Human Resources Consultant

Marathon Petroleum Company, LP

CAPTAIN MICHAEL WAYNE SCOTT,

the witness herein, having first been duly placed under oath, was examined and testified as follows:

EXAMINATION

BY MR. O'BRYAN:

Q Okay. Sir, could you please state your name.

A Michael Wayne Scott.

Q And you're employed by Marathon?

A Yes, sir.

Q For how long?

A Eight years.

Q And you're a captain?

A Yes, sir.

Q And you were the captain of the boat on August 27th of 2014 when Ryan Ruddell was -- claimed an injury?

A Yes, sir.

Q What is the rule at Marathon with regard to working in thunderstorm conditions?

A If there's any lightening we do not work. We shut the -- shut everything down.

Q Why is that?

A Because we don't want our employees to get injured or hurt.

Page 4

Page 5

<p style="text-align: right;">Page 6</p> <p>1 Q Was the loading facility shut down at any time on</p> <p>2 August 27th of 2014?</p> <p>3 A That, I don't know who -- if anybody was on the</p> <p>4 dock loading up there or not.</p> <p>5 Q There has been some testimony that the loading</p> <p>6 facility was shut down because of lightening.</p> <p>7 Do you know anything about that?</p> <p>8 A No, sir.</p> <p>9 Q Okay. So what were the -- you knew that there was</p> <p>10 bad weather coming on when the ship started that</p> <p>11 Mr. Ruddell was on, isn't that correct?</p> <p>12 A Yes, sir. I knew there was rain coming.</p> <p>13 Q Can you please repeat that.</p> <p>14 A Yes. I knew there was rain coming, yes.</p> <p>15 Q Okay. Did you know that there were -- where did</p> <p>16 you learn that from?</p> <p>17 A By observing behind me and by my radar.</p> <p>18 Q And don't you get anything over the radio that you</p> <p>19 listen to with regard to that?</p> <p>20 A You can listen to the Weather Channel, but the</p> <p>21 Weather Channel wasn't on. And, plus, I use apps</p> <p>22 on my phone. I can see what the weather is doing.</p> <p>23 Q And, okay, so what time was it about that</p> <p>24 Mr. Ruddell was -- this injury was noted to have</p>	<p style="text-align: right;">Page 8</p> <p>1 to give him the incident report to look at</p> <p>2 or?</p> <p>3 MR. O'BRYAN: Yeah, that would be</p> <p>4 fine.</p> <p>5 MR. RAYMOND MASSEY: Okay. I'm</p> <p>6 giving him -- Captain, I'm giving you the</p> <p>7 003, also 006, also 0643, which is a log, and</p> <p>8 0711, which is an employee statement, and</p> <p>9 also 339, 340, and 719 and 722.</p> <p>10 All of these, you know, you</p> <p>11 mention, Dennis, as ones you might be</p> <p>12 interested in. So I've given all of these to</p> <p>13 the Captain, okay?</p> <p>14 MR. O'BRYAN: Okay.</p> <p>15 BY MR. O'BRYAN:</p> <p>16 Q Have you reviewed any documents other than those</p> <p>17 ones that were just handed to you by defense</p> <p>18 counsel?</p> <p>19 A There was a few others that I have seen other than</p> <p>20 these but not very many.</p> <p>21 Q What were they?</p> <p>22 MR. O'BRYAN: Counsel, can you tell</p> <p>23 me?</p> <p>24 MR. RAYMOND MASSEY: If you</p>
<p style="text-align: right;">Page 7</p> <p>1 taken place?</p> <p>2 MR. RAYMOND MASSEY: Object to the</p> <p>3 form of the question. If you want to see</p> <p>4 incident reports or anything, you are welcome</p> <p>5 to do that. He didn't ask you about that,</p> <p>6 but you can if you need that.</p> <p>7 MR. O'BRYAN: Yeah. Feel free.</p> <p>8 Q Have you reviewed any documents to refresh your</p> <p>9 recollection?</p> <p>10 A Yes, sir.</p> <p>11 Q No, you have not?</p> <p>12 A Yes, sir, I have.</p> <p>13 Q Oh, okay. Okay. What have you looked at?</p> <p>14 A I don't understand what -- what the question --</p> <p>15 what are you wanting to know? When he reported</p> <p>16 the incident to me?</p> <p>17 Q No. I moved on to another question. I asked what</p> <p>18 documents you have reviewed. I'll ask counsel.</p> <p>19 MR. O'BRYAN: Has he reviewed any</p> <p>20 documents that we have not already noted to</p> <p>21 be potential exhibits?</p> <p>22 MR. RAYMOND MASSEY: No. He's</p> <p>23 looked at some, at least, of the ones you</p> <p>24 have mentioned, Dennis. And do you want me</p>	<p style="text-align: right;">Page 9</p> <p>1 remember, Captain. I mean, if you don't</p> <p>2 remember, that's fine.</p> <p>3 A I've seen ones where Isaac Perkins took a</p> <p>4 deposition on Dane Haukedahl and Blake Ginn.</p> <p>5 Q Okay.</p> <p>6 MR. O'BRYAN: Ray, has he looked at</p> <p>7 anything that we have not marked as exhibits.</p> <p>8 MR. RAYMOND MASSEY: I don't think</p> <p>9 so, Dennis. I mean, nothing comes --</p> <p>10 Q Okay. You haven't given any other statements to</p> <p>11 anybody that -- outside of these?</p> <p>12 MR. RAYMOND MASSEY: Yeah, I mean,</p> <p>13 he may have looked at the other statements --</p> <p>14 or not statements, but whatever they are, of</p> <p>15 the other witnesses that you are going to</p> <p>16 talk to today.</p> <p>17 MR. O'BRYAN: Right.</p> <p>18 Q But you haven't given any other statements, other</p> <p>19 than --</p> <p>20 MR. RAYMOND MASSEY: No, no. No,</p> <p>21 there are no other statements to my</p> <p>22 knowledge.</p> <p>23 MR. O'BRYAN: Okay.</p> <p>24 BY MR. O'BRYAN:</p>

<p style="text-align: right;">Page 10</p> <p>1 Q So what was your understanding that the weather 2 was going to be? 3 A That it was going to rain. 4 Q Well, it was going to get bad; isn't that a better 5 description of it? 6 A I can't determine if it's going to be bad that far 7 away or not. I mean, I just knew the rain was 8 coming. 9 Q Well, let's look at Exhibit 339. Tell me when you 10 have got that in front of you. 11 MR. RAYMOND MASSEY: Okay. You 12 might ask him if he knows what that is. 13 Because, I mean, that's -- I think you'll 14 find that's not the Captain's writing. I 15 think it is somebody else's. But go ahead. 16 BY MR. O'BRYAN: 17 Q You were interviewed by somebody who was taking 18 notes, correct? 19 A Yes, sir. 20 Q And was that Mr. Isaac -- 21 A Perkins? 22 Q -- Perkins? Was that -- who that -- was that? 23 A Isaac Perkins. He was the HR guy at Marathon. 24 Q All right. And he recorded that you said at 5:30</p>	<p style="text-align: right;">Page 12</p> <p>1 A Yes, sir. 2 Q Okay. And thunder means lightening, correct? 3 A Sometimes. 4 MR. RAYMOND MASSEY: Object to the 5 form of the question. Go ahead. 6 Q Who said "sometimes"? Was that you or was that 7 Ray? 8 A That was me. 9 Q Oh, okay. All right. So, now, at this -- at 5:30 10 you were tied off in the fleet, isn't that 11 correct? 12 MR. RAYMOND MASSEY: I don't think 13 that is correct. 14 A No, sir, that is not correct. 15 Q Or it says, "5:30 afternoon tie-off in fleet. 16 Weather was about to get bad." What does that 17 mean? 18 MR. RAYMOND MASSEY: Let me object 19 to the form of the question. Now, I don't 20 think you have established it. But as I 21 indicated, these are not the Captain's notes. 22 These are notes of somebody else who is not 23 here to be deposed. But it was Mr. Perkins. 24 So, I mean, he can look at logs and tell you</p>
<p style="text-align: right;">Page 11</p> <p>1 in the afternoon you were tied off in the fleet 2 and the weather was about to get bad. 3 Do you see that, the first line there, the 4 first couple of lines? 5 (Witness reviews document) 6 A Yes. 7 Q Okay. So does that refresh your recollection? 8 A Yes, sir. 9 Q So the weather was about to get bad, correct? 10 A Yeah. It was fixing to go from not raining to 11 raining, yes. 12 Q Well, I mean, you wouldn't consider a sprinkling, 13 it is going to sprinkle bad, would you? 14 MR. RAYMOND MASSEY: Let me object 15 to the form of the question. It is 16 argumentative. Go ahead, Captain. 17 A No. A sprinkling would not be as bad as a 18 downpour, no. 19 Q So you were expecting a downpour? 20 A It was an afternoon thunderstorm, yeah. I was 21 expecting it to rain, but I couldn't predict how 22 heavy it was going to be. 23 Q Okay. So you knew there was going to be an 24 afternoon thunderstorm?</p>	<p style="text-align: right;">Page 13</p> <p>1 what he was doing if you are looking for what 2 he was doing on the vessel. 3 MR. O'BRYAN: We have already 4 established it was by Mr. Perkins. 5 BY MR. O'BRYAN: 6 Q "5:30 afternoon tie-off in fleet. Weather was 7 about to get bad." Would you agree with that 8 statement? 9 A No, sir. I was not tying off at 5:30. 10 Q What were you doing at 5:30? 11 MR. RAYMOND MASSEY: Feel free to 12 look at the logs, Captain. 13 A At 5:30 I was at the wheelhouse, two miles from 14 getting out of the canal, Chain of Rocks Canal. 15 Ryan Ruddell, Dane Haukedahl, and Blake Ginn were 16 in the wheelhouse going over shift starter, which 17 was tying off in the fleet, and doing their 18 stretching exercises. 19 Q And you were more or less telling them what you 20 guys were about to get into? 21 A Yes, sir. 22 Q And you told them that you had a big storm coming, 23 isn't that correct? 24 A I told them there was a storm coming, yes.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q And you have got to hurry up and get there, 2 wherever you were going, isn't that correct? 3 A No, sir. I never did tell them to hurry up. 4 Q And did you tell them to hurry up and tie you in 5 before the storm comes because it is really bad? 6 A No, sir. 7 Q Now, if you have this rule about not working under 8 lightening conditions and you know -- you knew 9 that a thunderstorm was coming, how come you just 10 didn't sit until it passed? 11 A We have worked in the rain before. Like I said, 12 just because a thunderstorm, is does not mean 13 there is going to be lightening associated with 14 it. 15 Q Well, what is thunder in your opinion? 16 A When there's a big clap of noise in the sky. 17 Q And there was lightening, though, in this storm, 18 isn't that correct? 19 MR. RAYMOND MASSEY: Object to the 20 form of the question. What time are you 21 talking about, Dennis? 22 Q I'm asking, when this storm hit was there 23 lightening? 24 MR. RAYMOND MASSEY: But what time</p>	<p style="text-align: right;">Page 16</p> <p>1 Q So you would dispute -- or strike that. 2 So looking at these documents, what time did 3 this incident occur with regard to Mr. Ruddell? 4 A He has put on there 18:45, the time. 5 Q What time is that? 6:45? 6 A Eighteen hundred? Yeah, that would be 6:45. 7 MR. RAYMOND MASSEY: Just so you 8 know, Dennis, I think the times, all the 9 times refer to Eastern Standard Time. And 10 the only reason I mention that is because the 11 Saint Louis area is on a different time zone 12 than the time zone that's on these documents. 13 But you can ask the Captain, but I think all 14 the times you will see are Eastern Standard 15 Time as opposed to what the time was actually 16 in Saint Louis. Do you understand what I am 17 saying? 18 MR. O'BRYAN: Right. 19 BY MR. O'BRYAN: 20 Q So, now, when are you -- when did you say that you 21 observed the lightening? 22 A After the crew members had returned to the boat, 23 were already back on the boat. 24 Q Now, how many times have you met with defense</p>
<p style="text-align: right;">Page 15</p> <p>1 are you talking about? Object to the form of 2 the question. 3 Q I'm asking when this storm hit, was there 4 lightening. 5 MR. RAYMOND MASSEY: I know. But 6 I'm objecting to the term "hit." What are 7 you talking about, "hit"? I mean, there was 8 a thunderstorm in the Saint Louis area 9 sometime on that day, before midnight, before 10 it went to the next day, that's one thing. 11 But you are not being specific about what 12 time you are talking about. That's why it is 13 vague and ambiguous. 14 MR. O'BRYAN: Yeah. I can 15 understand, you want to telegraph the answer 16 to the witness. 17 MR. RAYMOND MASSEY: Well, no. It 18 is just -- 19 BY MR. O'BRYAN: 20 Q But did you observe lightening at any time on 21 August 27th of 2014? 22 A Yes, sir. After the crew had returned back to the 23 boat, after we tied off is when the lightening 24 started to appear.</p>	<p style="text-align: right;">Page 17</p> <p>1 counsel to discuss this event? 2 A I just met with him yesterday; it was the first 3 time. 4 Q Where at? 5 A At -- at the office, Marathon office, in 6 Catlettsburg. 7 Q For how long? 8 A It was about an hour and a half yesterday. 9 Q Who else was in the room? 10 A His son and our -- I can't think of her name at 11 the moment. 12 Q Who besides his son? 13 THE WITNESS: What is your name, 14 again? 15 MS. GRIFFITH: Tara Griffith. 16 A Tara. 17 MR. RAYMOND MASSEY: In-house 18 lawyer for Marathon. 19 MR. O'BRYAN: Okay. 20 BY MR. O'BRYAN: 21 Q So the thunderstorms were going on while you were 22 conducting operations, isn't that correct, with 23 Mr. Ruddell? 24 A When we got up there, started the landing, that's</p>

<p style="text-align: right;">Page 18</p> <p>1 when the rain hit.</p> <p>2 Q So where is that in relation to 6:45?</p> <p>3 A That would have probably been roughly about 18:30</p> <p>4 or so.</p> <p>5 Q Okay. So at what time are you saying you observed</p> <p>6 the lightening?</p> <p>7 A That, I couldn't specify what exact time that was.</p> <p>8 All I can tell you is the crew members were on the</p> <p>9 boat, back on the boat.</p> <p>10 Q Well, when they were conducting operations,</p> <p>11 though, the thunderstorms had hit, isn't that</p> <p>12 correct?</p> <p>13 A Yes. It was raining when -- when they were out</p> <p>14 there conducting operations.</p> <p>15 Q Now, how bad was the rain?</p> <p>16 A The rain started out light and then it became</p> <p>17 heavy.</p> <p>18 Q And so, then, would you agree that at 6:45 or</p> <p>19 thereabouts that the thunderstorms had hit by</p> <p>20 that time?</p> <p>21 MR. RAYMOND MASSEY: Object to the</p> <p>22 use of the term "thunderstorms." It is vague</p> <p>23 and ambiguous as to what you are talking</p> <p>24 about. And "hit" is vague and ambiguous as</p>	<p style="text-align: right;">Page 20</p> <p>1 A All right. When I came on watch, I could look</p> <p>2 behind me and over the city front of Saint Louis</p> <p>3 you could see the black clouds. But where I was</p> <p>4 at, there was no clouds.</p> <p>5 Q And what time did you come on watch?</p> <p>6 A I came on watch at 5 o'clock.</p> <p>7 Q And the rain was so heavy that you could not see</p> <p>8 the crew, isn't that correct?</p> <p>9 MR. RAYMOND MASSEY: Object to the</p> <p>10 form of the question, as to what time are you</p> <p>11 talking about?</p> <p>12 MR. O'BRYAN: Let's say 6:45.</p> <p>13 A Or that's when you are saying that he hurt</p> <p>14 himself, at 6:45?</p> <p>15 Q Yeah.</p> <p>16 A I could not see him from there, even if it wasn't</p> <p>17 raining. Due to the configuration of the barge, I</p> <p>18 cannot see the crew members from the wheelhouse.</p> <p>19 Q Right. But the rain coming down was of such a</p> <p>20 severity that it impeded your vision, too, isn't</p> <p>21 that correct?</p> <p>22 A Yes, sir.</p> <p>23 Q And what about the videos? What videos were</p> <p>24 pulled off the boat?</p>
<p style="text-align: right;">Page 19</p> <p>1 well. I object on those grounds.</p> <p>2 Go ahead, Captain, if you can</p> <p>3 answer.</p> <p>4 A Would you repeat the question again.</p> <p>5 Q Would you agree that by 6:45 the thunderstorms had</p> <p>6 hit?</p> <p>7 MR. RAYMOND MASSEY: The same</p> <p>8 objection. Go ahead, Captain.</p> <p>9 A Yes, sir. I would say that the storm had hit at</p> <p>10 that time, yes.</p> <p>11 Q Well, I'm saying thunderstorm.</p> <p>12 A Yes, sir, thunderstorm.</p> <p>13 Q Okay. And it progressively got worst once it</p> <p>14 started?</p> <p>15 A Yes. It -- like I said, it started out slowly, a</p> <p>16 light rain, and then it progressed into a heavy</p> <p>17 rain.</p> <p>18 Q What did the sky look like that you could tell by</p> <p>19 the appearance of it that there were thunderstorms</p> <p>20 coming?</p> <p>21 A At what time was you wanting to know about this?</p> <p>22 Q I thought you indicated earlier that you could</p> <p>23 tell that there was bad weather coming by looking</p> <p>24 at the sky.</p>	<p style="text-align: right;">Page 21</p> <p>1 A I have no clue if any videos were pulled off. I</p> <p>2 have no access to do any of that.</p> <p>3 Q Okay. Well, look at 3:40, the second page of</p> <p>4 notes by Isaac Perkins. Do you see the last line</p> <p>5 that he wrote down there?</p> <p>6 (Witness reviews document)</p> <p>7 A Yes, sir.</p> <p>8 Q "Pulled videos at Mike of the boat." Do you see</p> <p>9 that?</p> <p>10 A Yes, sir.</p> <p>11 Q What videos are there on the boat?</p> <p>12 A We have cameras stationed all around the boat</p> <p>13 which are recording all the time.</p> <p>14 Q Okay. And they were -- and what is the purpose of</p> <p>15 that?</p> <p>16 A The purpose of that is I can use them to help</p> <p>17 navigate when trying to come in to docks. Like</p> <p>18 backing in to Garyville, I can see how close I'm</p> <p>19 getting to the pylons and stuff.</p> <p>20 Q I'm talking about, though, recording videos, I</p> <p>21 mean, to have a video record.</p> <p>22 What is the purpose of having the video</p> <p>23 record?</p> <p>24 A Marathon uses that to record in case there's ever</p>

<p style="text-align: right;">Page 22</p> <p>1 any accidents/incidences with other vessels or</p> <p>2 anything --</p> <p>3 Q Okay.</p> <p>4 A -- so we would have them.</p> <p>5 Q So there was an accident reported that occurred on</p> <p>6 that day by Mr. Ruddell, isn't that correct?</p> <p>7 A On that day he did not report nothing to me.</p> <p>8 Q Well, the next day.</p> <p>9 A The following day, yes, it was brought to my</p> <p>10 attention.</p> <p>11 Q Okay. And the video -- okay. So that's the type</p> <p>12 of accident that typically you would retain the</p> <p>13 video for, correct?</p> <p>14 A I have no way of retaining the video. That's</p> <p>15 beyond my control.</p> <p>16 Q Well, where did they go when they were -- did you</p> <p>17 know that they had been pulled off at the time?</p> <p>18 A Like I said, I couldn't tell you because I don't</p> <p>19 know. I'm -- I don't have access to do that, and</p> <p>20 every so many days that stuff is recorded over.</p> <p>21 MR. RAYMOND MASSEY: Just so you</p> <p>22 know, Dennis, it is kind of confusing, but</p> <p>23 there are different videos they are talking</p> <p>24 about there on that line that you just</p>	<p style="text-align: right;">Page 24</p> <p>1 Ruddell got off. Mike's, Inc. has videos at</p> <p>2 their facility. What they talked about is</p> <p>3 getting Mike's videos that would show Ruddell</p> <p>4 getting off the boat, that would show if he,</p> <p>5 you know, if he was limping around or had any</p> <p>6 injury or whatever. That is what that is</p> <p>7 referring to. It is referring to securing</p> <p>8 Mike's, Inc.'s video, if they have any, and</p> <p>9 we know that they customarily have recordings</p> <p>10 at their facility. That's what that refers</p> <p>11 to.</p> <p>12 MR. O'BRYAN: Well, the videos on</p> <p>13 the boat --</p> <p>14 MR. RAYMOND MASSEY: They weren't</p> <p>15 pulled off, to my knowledge. But go ahead</p> <p>16 and ask anything you want. I just wanted to</p> <p>17 clear up. I know you were concentrating on</p> <p>18 that line there. And that's what that line</p> <p>19 refers to, is go to Mike's and see if they</p> <p>20 have got any videos of Ruddell getting off</p> <p>21 the boat and, if so, pull them. I think.</p> <p>22 But ask the Captain.</p> <p>23 BY MR. O'BRYAN:</p> <p>24 Q The videos that are on the boat record events as</p>
<p style="text-align: right;">Page 23</p> <p>1 referred to. That's talking about Mike's</p> <p>2 videos, Mike's, Inc. videos. Do you</p> <p>3 understand that or not?</p> <p>4 MR. O'BRYAN: No, I don't.</p> <p>5 MR. RAYMOND MASSEY: Well, you</p> <p>6 might ask the Captain, if you want to know;</p> <p>7 if you don't, that's fine. You can leave it</p> <p>8 kind of confused. But...</p> <p>9 Q Well, I mean, what does this "Mike" mean?</p> <p>10 A Mike's is a shipyard up there at Wood River, and</p> <p>11 they have video surveillance on their docks.</p> <p>12 Q Well, their videos would be on your boat?</p> <p>13 A No, sir.</p> <p>14 Q Well, it says, "Pulled videos at Mike's off the</p> <p>15 boat," correct?</p> <p>16 A Yeah. But they were referring to Mike's shipyard.</p> <p>17 Q So "pulled the videos on the boat off the boat at</p> <p>18 Mike's" correct?</p> <p>19 A This is -- you're confusing me.</p> <p>20 MR. RAYMOND MASSEY: Do you want me</p> <p>21 to tell you, Dennis, to speed it along?</p> <p>22 MR. O'BRYAN: Sure.</p> <p>23 MR. RAYMOND MASSEY: Mike's, Inc.</p> <p>24 has a facility there, and that's where</p>	<p style="text-align: right;">Page 25</p> <p>1 occurring out on the tow, isn't that correct?</p> <p>2 A There are two cameras that record out on the tow</p> <p>3 from the wheelhouse, yes.</p> <p>4 Q Okay. So what I am asking about is the video that</p> <p>5 recorded the events as they were occurring at or</p> <p>6 about 6:25 on August 14th of -- or August 27th of</p> <p>7 2014. What about those videos?</p> <p>8 A Like I said, I have no control over them videos.</p> <p>9 That's up to the office to -- to pull them videos,</p> <p>10 if they wanted to pull them. Other than that, I</p> <p>11 have no control. I cannot access them or nothing.</p> <p>12 Q Were they pulled?</p> <p>13 A Like, again, I -- I do not know, sir.</p> <p>14 Q Does someone have to come on the boat to pull them</p> <p>15 or is it internet or something?</p> <p>16 A They could pull them from the office. They have</p> <p>17 -- we have satellite.</p> <p>18 Q And they could pull them off the boat, too?</p> <p>19 A Yes. They can access the videos from the office</p> <p>20 that's on the boat.</p> <p>21 Q No. I'm saying, is there like a disc on the boat</p> <p>22 or a VHS or anything?</p> <p>23 A It's more like a -- like on an airplane, you know,</p> <p>24 they have the, what is it called, the black box or</p>

<p style="text-align: right;">Page 26</p> <p>1 whatever. Ours is called the blue box.</p> <p>2 Basically, it's, I guess, a hard drive on there</p> <p>3 that stores that stuff.</p> <p>4 Q Okay. And was that box ever removed?</p> <p>5 A No, sir.</p> <p>6 Q So you don't know anything about these</p> <p>7 forward-looking videos that would have been made</p> <p>8 on or about August 27th, 2014 at 6:45 p.m.,</p> <p>9 correct?</p> <p>10 A All I can tell you is the cameras were recording.</p> <p>11 And after -- what happens to the videos after</p> <p>12 that, I have no idea.</p> <p>13 Q So when is it you say -- I'm sorry. I know you</p> <p>14 have already answered.</p> <p>15 But when is it you say you first saw the</p> <p>16 lightening?</p> <p>17 A After the crew members had returned to the boat.</p> <p>18 Q And what did you do then?</p> <p>19 A We were already tied off and everybody was inside.</p> <p>20 Q Let's look at number 729 for a minute.</p> <p>21 MR. RAYMOND MASSEY: Let's see.</p> <p>22 What is 729, Dennis?</p> <p>23 MR. O'BRYAN: It is the official</p> <p>24 accident report.</p>	<p style="text-align: right;">Page 28</p> <p>1 the weather channels on the radio -- VHS radios.</p> <p>2 Q And what did you do on that day --</p> <p>3 A Observed --</p> <p>4 Q -- that you recall?</p> <p>5 A For one, I observed behind me. And, second, I</p> <p>6 used one of the apps on my phone which showed the</p> <p>7 -- the storm over Saint Louis.</p> <p>8 Q And did it say lightening?</p> <p>9 A No, sir.</p> <p>10 Q What did it say about the storm, if you recall?</p> <p>11 A It was a radar app, is what I looked at.</p> <p>12 Q So you didn't look at -- did you look at anything</p> <p>13 that would have indicated lightening?</p> <p>14 A No, sir. I didn't look at nothing that would</p> <p>15 predict if there was lightening.</p> <p>16 Q I'm saying -- okay. You looked at the app and</p> <p>17 your radar and the sky, correct?</p> <p>18 A Yes.</p> <p>19 Q And would your app indicate just thunderstorms or</p> <p>20 would it indicate lightening also?</p> <p>21 A The app I used was just the radar app showing the</p> <p>22 thunderstorm.</p> <p>23 Q Oh. So you can -- it is more or less a visual</p> <p>24 thing, you see the dark clouds on an app?</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. DANIEL MASSEY: It is the same</p> <p>2 as six, I believe.</p> <p>3 MR. RAYMOND MASSEY: The same as</p> <p>4 six, is that right?</p> <p>5 MR. O'BRYAN: Yeah, probably.</p> <p>6 THE WITNESS: That is his right</p> <p>7 there (indicating).</p> <p>8 MR. RAYMOND MASSEY: Okay. He's</p> <p>9 got -- the Captain has 06 in front of him.</p> <p>10 That may be a duplicate. But it is titled up</p> <p>11 at the top "MPC and Contractor Occupational</p> <p>12 Injury/Illness Incident Report" signed by the</p> <p>13 Captain. Is that what you wanted?</p> <p>14 MR. O'BRYAN: Yeah.</p> <p>15 MR. RAYMOND MASSEY: Okay. That's</p> <p>16 in front of him.</p> <p>17 BY MR. O'BRYAN:</p> <p>18 Q Before we get to that. Now, when you came on</p> <p>19 watch, tell me all of the ways that are available</p> <p>20 to you to become knowledgeable of upcoming weather</p> <p>21 besides looking at the sky.</p> <p>22 A I have a radar which I can adjust to mileage. I</p> <p>23 have like four apps on my phone where I can watch</p> <p>24 the weather. And if I want to, I can also access</p>	<p style="text-align: right;">Page 29</p> <p>1 A It's like what you would see on TV when they show</p> <p>2 the weather, showing the rain, where it is at.</p> <p>3 Q Do you know the name of that app?</p> <p>4 MR. RAYMOND MASSEY: The Captain is</p> <p>5 pulling out his phone with an app on it, I</p> <p>6 guess.</p> <p>7 (Witness reviews cellular phone)</p> <p>8 A NOAA Weather Radar, N-O-A-A.</p> <p>9 Q How do you spell that?</p> <p>10 A N-O-A-A Weather Radar.</p> <p>11 Q So you didn't look at anything that would say --</p> <p>12 well, so you don't consider thunderstorms to be</p> <p>13 synonymous with lightening storms?</p> <p>14 A They can be. Yes, they can be.</p> <p>15 Q But you didn't know one way or the other whether</p> <p>16 this storm or this weather coming on was going to</p> <p>17 be a lightening storm?</p> <p>18 A No, sir.</p> <p>19 Q Now, are there apps that tell you whether there is</p> <p>20 going to be lightening coming?</p> <p>21 A I'm sure there is apps out there that do that, but</p> <p>22 I don't have it.</p> <p>23 Q Okay. Let's look at that injury/illness/incident</p> <p>24 report.</p>

<p style="text-align: right;">Page 30</p> <p>1 (Witness reviews document)</p> <p>2 Q You signed that, correct?</p> <p>3 A Yes, sir. That's my signature at the bottom.</p> <p>4 Q Okay.</p> <p>5 MR. RAYMOND MASSEY: And just for</p> <p>6 identification purposes, they are referring</p> <p>7 to Bates stamp 06.</p> <p>8 Q And what writing is yours?</p> <p>9 A The writing at the bottom, my name, Captain. Then</p> <p>10 right above it proper lifting, bend with knees.</p> <p>11 Line 15 was Dane Haukedahl and Anthony Ginn.</p> <p>12 And line 9, that's my writing.</p> <p>13 Q And it seems that Ryan Ruddell also signed that</p> <p>14 document. Or I don't know if he signed it.</p> <p>15 But it says "completed by" in number 17, correct?</p> <p>16 A Yes. That's his handwriting on 17.</p> <p>17 Q Were you there when he was filling it out?</p> <p>18 A Yes, sir.</p> <p>19 Q And were you discussing it with him at the time?</p> <p>20 A We were discussing his injury, yes, sir.</p> <p>21 Q Okay. So you have got the place the incident</p> <p>22 occurred "first coupling at L&C fleet." How did</p> <p>23 you come upon that information?</p> <p>24 A From what he had told me.</p>	<p style="text-align: right;">Page 32</p> <p>1 A I can't tell you if he took the wire off correctly</p> <p>2 or not. Like I said, I could not see from my</p> <p>3 vantage point.</p> <p>4 Q Well, you criticized his lifting in number 4,</p> <p>5 isn't that correct, where you filled that in?</p> <p>6 A Yes, sir.</p> <p>7 Q But you didn't see him lifting; is that not</p> <p>8 correct?</p> <p>9 A That day I did not see him, no.</p> <p>10 Q So upon what did you base this statement that</p> <p>11 proper lifting would prevent a recurrence?</p> <p>12 A I based that on from what he told me and what the</p> <p>13 first mate told me, that he was bent over with his</p> <p>14 back. And it is policy that we do proper lifting</p> <p>15 and bending by the knees.</p> <p>16 Q Okay. What did he tell you with regard to that?</p> <p>17 A Did who what tell me, Ryan or Dane?</p> <p>18 Q Ryan. Ryan. Or Ryan. Ryan.</p> <p>19 A Ryan just told me he hurt his back by bending</p> <p>20 over.</p> <p>21 Q Did he tell you how he was bending over?</p> <p>22 A No, sir.</p> <p>23 Q Okay. What about number 13? What did he tell you</p> <p>24 the types of hurt or soreness he had?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q Okay. And number 11, where he filled that in,</p> <p>2 "took wire off timber head (fleeting barges),"</p> <p>3 did you discuss that with him?</p> <p>4 A He just told me that he took the wire off a timber</p> <p>5 head.</p> <p>6 Q And number 12, it says, "took wire off timber head</p> <p>7 and handed it to the mate." Did you discuss that</p> <p>8 with him?</p> <p>9 A Yes. He discussed that with me, yes.</p> <p>10 Q Was there anything unusual about how he did that,</p> <p>11 in your opinion?</p> <p>12 MR. RAYMOND MASSEY: Object to the</p> <p>13 form of the question. There was no</p> <p>14 foundation laid that the Captain knows that.</p> <p>15 A I couldn't see that from my perspective. From my</p> <p>16 -- from the wheelhouse, I could not see.</p> <p>17 Q So you don't have any opinion one way or the other</p> <p>18 whether he did that correctly?</p> <p>19 A I have --</p> <p>20 MR. RAYMOND MASSEY: Object to the</p> <p>21 form of the question. He said he didn't see</p> <p>22 anything. I don't know that you have asked a</p> <p>23 foundation to ask for an opinion. Go ahead,</p> <p>24 sir.</p>	<p style="text-align: right;">Page 33</p> <p>1 A He pretty much told me what he wrote there, about</p> <p>2 his groin area hurting, I can't hardly read this,</p> <p>3 shooting pain down the front of his leg. That's</p> <p>4 what he told me.</p> <p>5 Q And prior to that time had you noticed any</p> <p>6 abnormal behavior of Ryan with regard to his</p> <p>7 ability to work and move and get around?</p> <p>8 A No, sir.</p> <p>9 Q Now, he -- let's look at 003.</p> <p>10 (Witness reviews document)</p> <p>11 Q Now, that's the crew member's report of injury,</p> <p>12 isn't that correct?</p> <p>13 A Yes, sir. That's Ryan's, yes.</p> <p>14 Q And so would you agree or disagree or not know</p> <p>15 whether or not lightening was observable at</p> <p>16 6:45 p.m.?</p> <p>17 A At 6:45 there was no lightening.</p> <p>18 Q What time did they come back up to the wheelhouse?</p> <p>19 A They came back to the boat, I don't know exact</p> <p>20 time, maybe about 6:55, somewhere in that</p> <p>21 ballpark.</p> <p>22 Q Oh. So you are saying that you saw lightening at</p> <p>23 or about 6:55 but not at 6:45?</p> <p>24 MR. RAYMOND MASSEY: Object to the</p>

<p style="text-align: right;">Page 34</p> <p>1 form of the question. You've already asked</p> <p>2 and answered that. You have already asked</p> <p>3 the question and the Captain has already</p> <p>4 answered that no lightening was observable</p> <p>5 until they were in the boat.</p> <p>6 MR. O'BRYAN: I'm just --</p> <p>7 Q You can answer.</p> <p>8 A The crew members were back on the boat during the</p> <p>9 lightening, which, give or take, was around 6:55</p> <p>10 or so.</p> <p>11 Q All right. And so on 003, which is Mr. Ruddell's</p> <p>12 accident report, you would not dispute his -- what</p> <p>13 he wrote in the weather conditions of heavy rain</p> <p>14 and thunderstorms, correct?</p> <p>15 A In what -- what form are you looking at?</p> <p>16 Q 003.</p> <p>17 A I see no weather. Oh. Heavy rain.</p> <p>18 Q It is about five lines down.</p> <p>19 A Yeah, "weather conditions." Now, what was your</p> <p>20 question, again?</p> <p>21 Q You would not disagree with his description of</p> <p>22 heavy rain and thunderstorms, isn't that correct?</p> <p>23 A No. I wouldn't disagree, no.</p> <p>24 Q So in terms of thunderstorms versus lightening</p>	<p style="text-align: right;">Page 36</p> <p>1 A You would have to request on our policies what our</p> <p>2 policy is for working in adverse weather.</p> <p>3 Q And what does it say, if you recall?</p> <p>4 A I couldn't tell you exactly word for word what it</p> <p>5 says without being able to look at it.</p> <p>6 Q What is your best recollection?</p> <p>7 A During lightening storms we don't work; there's</p> <p>8 other things in there, icy conditions.</p> <p>9 MR. O'BRYAN: Would you happen to</p> <p>10 have -- okay. Off the record.</p> <p>11 (Discussion held off the record)</p> <p>12 BY MR. O'BRYAN:</p> <p>13 Q Irrespective, Captain, it is your recollection</p> <p>14 that there is a written rule regarding working in</p> <p>15 lightening conditions, correct?</p> <p>16 A It's been a standard rule since I've worked here</p> <p>17 at Marathon. We do not work in the lightening.</p> <p>18 Q Okay. Now, let's get back for a moment to this</p> <p>19 injury/illness/incident report. I think it was</p> <p>20 00, I have, 729 but I forget what your number is.</p> <p>21 MR. RAYMOND MASSEY: I think it is</p> <p>22 06, I think is what you are mentioning.</p> <p>23 MR. O'BRYAN: Okay.</p> <p>24 BY MR. O'BRYAN:</p>
<p style="text-align: right;">Page 35</p> <p>1 storms, you don't -- am I correct that you don't</p> <p>2 consider it to be a lightening situation -- or,</p> <p>3 no, strike that.</p> <p>4 Am I correct that you don't consider a</p> <p>5 thunderstorm to be a lightening situation unless</p> <p>6 you visibly observe the lightening?</p> <p>7 MR. RAYMOND MASSEY: Object to the</p> <p>8 form of the question. It is vague and</p> <p>9 ambiguous. Go ahead, Captain.</p> <p>10 A In my experience on the river of 32 years,</p> <p>11 thunderstorms can be nothing but rain, then it</p> <p>12 could also have association with lightening.</p> <p>13 Q Well, is there anything different in your mind</p> <p>14 between heavy rain and -- heavy rainstorm and</p> <p>15 thunderstorm?</p> <p>16 A A thunderstorm can be heavy rain with a -- the</p> <p>17 sound of thunder -- I mean, thunder to it and</p> <p>18 still be no lightening.</p> <p>19 Q Now, where is this rule that you made reference to</p> <p>20 earlier that you shouldn't be working in</p> <p>21 lightening storms?</p> <p>22 A That's in our policies.</p> <p>23 Q And if I were to make a request for that, I mean,</p> <p>24 what would I ask for? Your policy book or?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Now, this proper lifting with the knees, so tell</p> <p>2 us about that, that entry you put to prevent a</p> <p>3 recurrence.</p> <p>4 MR. RAYMOND MASSEY: What do you</p> <p>5 mean by "tell us about that"? It is just</p> <p>6 vague and ambiguous. Do you mean --</p> <p>7 Q What does that mean?</p> <p>8 MR. RAYMOND MASSEY: -- have him</p> <p>9 explain the rule or what?</p> <p>10 MR. O'BRYAN: Yeah, that would be</p> <p>11 good.</p> <p>12 MR. RAYMOND MASSEY: All right.</p> <p>13 A There are training. He has to do training every</p> <p>14 year. We all have to do training. And there's a</p> <p>15 video that you watch that teaches you, tells you</p> <p>16 how to properly lift, how to do it and not to do</p> <p>17 it.</p> <p>18 Q What were the wind conditions at the time of this</p> <p>19 incident?</p> <p>20 A Best to my recollection -- the best I can</p> <p>21 remember, it was maybe like a five mile an hour</p> <p>22 wind, according to my wind meter.</p> <p>23 Q How many miles?</p> <p>24 A Five.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q Was it a situation where the rain was blowing 2 sideways? 3 A No, sir. It was coming straight down. 4 Q So you're saying that the electrical storm aspect 5 of this period of time did not become apparent to 6 you until after Mr. Ruddell and the other crew 7 members were back in the wheelhouse? 8 MR. RAYMOND MASSEY: Object to the 9 form of the question. It is vague and 10 ambiguous as you've phrased it. Go ahead, 11 Captain. 12 A The crew members were back safely on board when 13 the lightening actually started getting closer to 14 the area. 15 Q Now, when you got off watch on that day and you 16 went down to the galley, you smelled Bengay at 17 that time? 18 A Yes, sir. 19 Q And did you look into that at all -- 20 A No, sir. 21 Q -- like who is wearing -- who is using Bengay or 22 anything like that? 23 A No, sir. 24 Q But that was kind of -- you noticed it --</p>	<p style="text-align: right;">Page 40</p> <p>1 A (Witness so complies). 2 Q So which entry would be closest in time to this 3 incident at 6:45? 4 A The 16:40 traffic delay. 5 Q Okay. Where were you when you came on watch? 6 A When I come -- 7 MR. RAYMOND MASSEY: Object to the 8 form of the question. It has already been 9 asked and answered. But go ahead, Captain. 10 A I relieved the pilot, I believe it was, 11:05. I 11 was below the Chain of Rocks Canal bridges. 12 Q Were you tied off or? 13 A No, sir. I was proceeded northbound. 14 Q And then you had to go through a lock? 15 A No, sir. I was above the lock. 16 Q Did you note the lock delay? 17 A The pilot incurred lock delay, yes. 18 Q Okay. And then you had to go through the lock at 19 15:30, isn't that correct? 20 A The pilot locked at 15:30. 21 Q Well, which entries -- what mile numbers on this 22 log sheet that you had the sticks? 23 A I came on at 17:05. 24 Q Oh, okay.</p>
<p style="text-align: right;">Page 39</p> <p>1 A Yes. I could smell it. 2 Q -- correct? 3 A Yes. I could smell it. 4 Q But you didn't ask around, all right. And the 5 reason why you did not observe this incident is 6 because it was raining so hard at the time, isn't 7 that correct? 8 A It was a combination of the rain and my vision due 9 to the barge. 10 Q But in your witness statement reporting to your 11 company you just said you didn't see what was 12 going on because it was raining hard, isn't that 13 correct? 14 (Witness reviews document) 15 MR. RAYMOND MASSEY: Do you want 16 him to look at something? 17 MR. O'BRYAN: Yeah. Look at number 18 11. 19 MR. RAYMOND MASSEY: Number 11? 20 MR. O'BRYAN: Yeah. 21 A Yes, it was raining hard. But also, like I said, 22 due to the configuration of the barge I could not 23 see the crew members. 24 Q Okay. Let's look at the log, number 643.</p>	<p style="text-align: right;">Page 41</p> <p>1 A Yeah. I looked at the noon position instead of 2 the evening. 3 Q Okay. So what does that say for "description of 4 operation" at 17:05? 5 A That's when I did watch change protocol with the 6 pilot and relieved him. 7 Q And is that when you had the discussion with the 8 crew members about bad weather was coming, 9 et cetera? 10 A That was at 17:30. 11 Q Okay. Was that noted anywhere on a document or it 12 is just your recollection? 13 A We have a shift starter log that's noted on there 14 when the shift starter took place. 15 Q Oh. Well, what else is on -- that is a shift 16 starter log? 17 MR. RAYMOND MASSEY: Which one is 18 that? 19 Q Is that what it is called? 20 A Yes. It shows that we did -- they did a shift 21 starter before coming on watch. We discussed what 22 was fixing to take place during that time. 23 Q And what type of entries are put in that shift 24 starter log?</p>

<p style="text-align: right;">Page 42</p> <p>1 A It would have my name on it, Dane's name on it, 2 and what shift starter was performed, which would 3 have been fleeting tow. 4 Q So do you note like bad weather coming or anything 5 like that? 6 A Weather was discussed, yes. 7 Q Would it have been, you know, put down on the log? 8 A No, sir. 9 MR. O'BRYAN: Off the record. 10 (Discussion held off the record) 11 BY MR. O'BRYAN: 12 Q Okay. So between -- so you have got mile 190, 13 196 -- and 196 noted in your entries on that log 14 sheet, correct? 15 A Yes, sir. 16 Q Now, between what two points in time would the 17 report of the incident have occurred? 18 A 18:45 is when the -- he assumed that it happened. 19 Q So you were at the fleet at that time? 20 A Yes, sir. 21 Q And when did you eventually load? 22 MR. RAYMOND MASSEY: I think you 23 cut out. What was that question? 24 A You will have to repeat the question. You are</p>	<p style="text-align: right;">Page 44</p> <p>1 (Witness reviews document) 2 MR. RAYMOND MASSEY: And I'll show 3 him 8/29 as well, which is Document 641. 4 (Witness reviews document) 5 MR. RAYMOND MASSEY: And I'll show 6 him 639, which is -- let's see. Actually, 7 I'll show him 640, which is 8/30, that's 8 August 30th. And then I'll show him 639, 9 which is August 31. 10 So in summary I'm showing the 11 Captain the log for 8/28, 8/29, 8/30, 8/31. 12 That's for the next four days, Dennis, all 13 right? Is that what you want? 14 MR. O'BRYAN: All right. Yeah. 15 MR. RAYMOND MASSEY: And your 16 question was, when did they begin to load, 17 right? 18 MR. O'BRYAN: Right. 19 THE WITNESS: That's not on any of 20 these dates. 21 MR. RAYMOND MASSEY: Okay. Did you 22 hear what he said? He said it is not on any 23 of these dates. 24 BY MR. O'BRYAN:</p>
<p style="text-align: right;">Page 43</p> <p>1 kind of cutting in. 2 Q Okay. I'm sorry. At 18:30 you put down "stand by 3 the load," isn't that correct? 4 A Yes. 5 Q When did you load? 6 A Did we load, start loading? 7 Q Yeah. 8 A I do not have that information in front of me to 9 tell you exactly when we started. 10 MR. RAYMOND MASSEY: Do you want to 11 look at another log? Do you want him to look 12 at another log, Dennis? 13 MR. O'BRYAN: Yeah. 14 MR. RAYMOND MASSEY: I mean, they 15 didn't load for a day or two. Do you want 16 him to see another log? 17 MR. O'BRYAN: Yeah. 18 MR. RAYMOND MASSEY: Okay. I'm 19 showing the Captain what has been marked as 20 Bates stamp 642, which is a log for 8/28. 21 Do you want him to look at that? 22 MR. O'BRYAN: Yeah. 23 MR. RAYMOND MASSEY: That's the 24 next day.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q So you didn't load for a number of days after? 2 A Yes, sir. It was several days after. 3 Q So did you just stay there at the fleet for a 4 number of days? 5 A We would run up to Mike's every now and then, once 6 to, you know, get supplies and groceries and stuff 7 like that, I believe. Or it looks like -- no. 8 We sit there, according to my logs here that I am 9 looking at, we sit there -- sit there in the fleet 10 for them days. 11 MR. RAYMOND MASSEY: Actually, I'm 12 showing him the next -- if you want me to, 13 I'll show him the next couple of days. Do 14 you want him to do that? Dennis, do you want 15 him -- 16 MR. O'BRYAN: Yeah, that would be 17 all right. 18 MR. RAYMOND MASSEY: Okay. Well, 19 I'm just trying to move it along. 20 I'm showing him also logs for 21 September 1 and September 2, and that's 22 document Bates stamp 638 and 637. 23 And so in summary we've now got the 24 logs from 8/28, 8/29, 8/30, 8/31, 9/1, and</p>

<p style="text-align: right;">Page 46</p> <p>1 9/2.</p> <p>2 A We're still just standing by waiting to load, even</p> <p>3 to them dates.</p> <p>4 Q Okay. So, now, I know that at the bottom of that</p> <p>5 log sheet, I'm looking at 643 for 8/27, it has an</p> <p>6 entry for weather. But that apparently is just</p> <p>7 for delays, is that correct?</p> <p>8 (Witness reviews document)</p> <p>9 A Which log is that, again, sir?</p> <p>10 Q 643.</p> <p>11 MR. RAYMOND MASSEY: That's the</p> <p>12 date of 8/27. What is your question?</p> <p>13 A There is no weather delay on there.</p> <p>14 Q Right. Is there anywhere where you record the</p> <p>15 weather? Did you record electrical storms</p> <p>16 anywhere?</p> <p>17 A No, sir.</p> <p>18 Q If you were to record such a thing, where, if</p> <p>19 anywhere, would you have recorded it?</p> <p>20 MR. RAYMOND MASSEY: Object to the</p> <p>21 form of the question. I think he's answered</p> <p>22 they don't record it, but. It has been asked</p> <p>23 and answered. Go ahead, Captain.</p> <p>24 A We don't record the weather other than if we have</p>	<p style="text-align: right;">Page 48</p> <p>1 A Yes, sir.</p> <p>2 Q By that time had the barges already been tied off</p> <p>3 in the fleet there at Lewis and Clark?</p> <p>4 A Yes. They had already been secured.</p> <p>5 Q Looking at the logs that you have looked at, over</p> <p>6 the next several days did the motor vessel</p> <p>7 Nashville and the barges stay generally at that</p> <p>8 facility while they were waiting to be loaded?</p> <p>9 A Yes, sir.</p> <p>10 Q At any time during the operation, where the crew</p> <p>11 members were out on the tow, did you or anyone</p> <p>12 tell any of the crew to hurry?</p> <p>13 A No, sir.</p> <p>14 Q Do you and the company have a policy against</p> <p>15 hurrying out on the deck?</p> <p>16 A Our policy is safety first. We do not make</p> <p>17 anybody rush because we want to make sure</p> <p>18 everybody stays safe.</p> <p>19 Q In the rain, if it's raining, is there a custom</p> <p>20 and practice as far as whether or not you hurry or</p> <p>21 not or even slow down under those circumstances?</p> <p>22 A Everybody has the right to say "stop" if they feel</p> <p>23 that things are unsafe, including me and, plus, my</p> <p>24 crew.</p>
<p style="text-align: right;">Page 47</p> <p>1 to stop due to the weather.</p> <p>2 Q Yeah. Do you record things like that or not</p> <p>3 really?</p> <p>4 A If it's a heavy rainstorm, we'll record it. We'll</p> <p>5 have to stop due to visibility. We'll record that</p> <p>6 or a heavy snowstorm.</p> <p>7 Q Okay. And at the time of this incident you had a</p> <p>8 heavy rainstorm that affected your visibility,</p> <p>9 isn't that correct, at 6:45?</p> <p>10 A Yes.</p> <p>11 MR. O'BRYAN: All right. That's</p> <p>12 all I have for you, Captain.</p> <p>13 MR. RAYMOND MASSEY: Captain, I</p> <p>14 have some questions. I'll be brief.</p> <p>15 EXAMINATION</p> <p>16 BY MR. RAYMOND MASSEY:</p> <p>17 Q So that there is no confusion, Captain, because it</p> <p>18 was asked a number of different times, while the</p> <p>19 crew members were out tying off the barges at the</p> <p>20 fleet, was there any lightening at that time, sir?</p> <p>21 A No, sir.</p> <p>22 Q Lightening was observed later in the day after the</p> <p>23 crew members came back to the boat, is that true,</p> <p>24 sir?</p>	<p style="text-align: right;">Page 49</p> <p>1 Q All right. If, for example, any crew member saw</p> <p>2 lightening or were nervous about any lightening</p> <p>3 conditions in the area, can any of the crew</p> <p>4 members stop operations immediately?</p> <p>5 A Yes, sir.</p> <p>6 Q Did anything like that occur during the time any</p> <p>7 of the crew members were out on the vessels at the</p> <p>8 time of this incident?</p> <p>9 A No, sir.</p> <p>10 Q At the time of this incident -- strike that.</p> <p>11 How long did this entire operation take from</p> <p>12 the time your vessel and its tow arrived at Lewis</p> <p>13 and Clark until the crew members were back inside</p> <p>14 the boat?</p> <p>15 A Roughly about 25 to 30 minutes.</p> <p>16 Q And when they -- when the crew members first went</p> <p>17 out on deck, was there any rain at that time?</p> <p>18 A No, sir, there was none.</p> <p>19 Q But during the process of tying off the barges to</p> <p>20 the fleet it began to rain?</p> <p>21 A Yes, sir. When we first started catching the</p> <p>22 first head wire, it started to rain.</p> <p>23 Q All right. There was some questions about the</p> <p>24 vessel video and the fact that you have some video</p>

<p style="text-align: right;">Page 50</p> <p>1 cameras on the boat itself. And you talked about</p> <p>2 not being able to see the crew members.</p> <p>3 If you look from the head of the tow back to</p> <p>4 the next coupling, is that where they were doing</p> <p>5 the work at the time -- at the last coupling or</p> <p>6 not? That was a bad question. Let me rephrase</p> <p>7 the question.</p> <p>8 How many couplings would you say that you had</p> <p>9 in this tow of six barges?</p> <p>10 A Two.</p> <p>11 Q And if you go from the front or the bow of the tow</p> <p>12 backwards, the first coupling would be between the</p> <p>13 first barge and the second barge, is that true?</p> <p>14 A Yes.</p> <p>15 Q And the second coupling would be between the</p> <p>16 second barge and the third barge --</p> <p>17 A Yes, sir.</p> <p>18 Q -- back towards the boat?</p> <p>19 A Yes, sir.</p> <p>20 Q The last coupling that the crew was involved in</p> <p>21 would have been coupling number two?</p> <p>22 A Yes.</p> <p>23 Q Now, at the time the Nashville crew was working</p> <p>24 out on the barges there was another crew working</p>	<p style="text-align: right;">Page 52</p> <p>1 you or mention that the conditions were such that</p> <p>2 they wanted to quit or they were coming in or</p> <p>3 anything like that?</p> <p>4 A No, sir.</p> <p>5 Q And had they wanted to do that could all of them</p> <p>6 freely communicate to you and then come in?</p> <p>7 A Yes, sir.</p> <p>8 Q After the rain started and even up to the time</p> <p>9 when it was raining the hardest, I think you</p> <p>10 indicated the rain was coming down and was not</p> <p>11 blowing sideways?</p> <p>12 A No. It was coming straight down.</p> <p>13 Q And how would you judge the amount of rain? If</p> <p>14 you use like an inch an hour, a half inch an hour,</p> <p>15 or whatever, would you be able to give us an</p> <p>16 estimate of your thoughts?</p> <p>17 A At the heaviest -- at the heaviest point?</p> <p>18 Q Yes, sir, at the heaviest points.</p> <p>19 A I would say probably about an inch an hour.</p> <p>20 Q And were any of the crew members out there, our</p> <p>21 crew members or the Lewis and Clark crew members,</p> <p>22 were any of them wearing any kind of rain gear?</p> <p>23 A Not that I can remember, no.</p> <p>24 Q Is that customary, not to wear rain gear in the</p>
<p style="text-align: right;">Page 51</p> <p>1 out there with them, is that true?</p> <p>2 A Yes, sir. The tug service there, their guys were</p> <p>3 out there.</p> <p>4 MR. O'BRYAN: Ray?</p> <p>5 MR. RAYMOND MASSEY: I'm sorry?</p> <p>6 MR. O'BRYAN: Ray, can we just take</p> <p>7 a short break? I have to go use the</p> <p>8 restroom.</p> <p>9 MR. RAYMOND MASSEY: Okay. That's</p> <p>10 fine. Taking a break.</p> <p>11 (11:02 a.m. BREAK 11:09 a.m.)</p> <p>12 BY MR. RAYMOND MASSEY:</p> <p>13 Q Captain, when the, I'll use the phrase, tying off</p> <p>14 procedure was being done at Lewis and Clark and</p> <p>15 the Lewis and Clark people were there and our deck</p> <p>16 crew were there, did all of the people have</p> <p>17 communication devices of one sort or another?</p> <p>18 A Yes. They all had walkie-talkies, VHS.</p> <p>19 Q So that they could communicate with you, that is</p> <p>20 your crew members, and so that the Lewis and Clark</p> <p>21 people could communicate with their wheelhouse?</p> <p>22 A Yes, sir.</p> <p>23 Q At any time did any of our crew members or any</p> <p>24 crew members, to your knowledge, say anything to</p>	<p style="text-align: right;">Page 53</p> <p>1 summer in the Saint Louis area if it is raining</p> <p>2 like that?</p> <p>3 A That's -- that's their discretion if they want to</p> <p>4 wear it. I mean...</p> <p>5 Q All right. We had rain gear available if anybody</p> <p>6 wanted to use it?</p> <p>7 A Yes, sir.</p> <p>8 Q Now, looking at the logs that you have, it appears</p> <p>9 that after the barges were tied off that you all</p> <p>10 generally remained in that same location at</p> <p>11 Lewis and Clark for at least four or five or</p> <p>12 six days after you all landed, is that true?</p> <p>13 A Yes, sir.</p> <p>14 Q And during that time the barges, when they were</p> <p>15 ready to be loaded, would be taken out two at a</p> <p>16 time and taken to the facility to be loaded?</p> <p>17 A Yes, sir.</p> <p>18 Q But it was almost a week before you all left that</p> <p>19 area after being loaded at least?</p> <p>20 A Yes, sir.</p> <p>21 Q So there was no hurrying or particular reason to</p> <p>22 be in a hurry to do anything, was there?</p> <p>23 A No, sir.</p> <p>24 Q Now, after this incident on the 27th, the next day</p>


<p style="text-align: right;">Page 54</p> <p>1 on the 28th the incident was reported to you as</p> <p>2 the Captain?</p> <p>3 A Yes.</p> <p>4 Q At any time when you talked to Mr. Ruddell, or</p> <p>5 Mr. Ruddell (pronouncing), did he indicate to you</p> <p>6 that he had any difficulties with wires of any</p> <p>7 sort?</p> <p>8 A No, sir.</p> <p>9 Q Did he indicate that weather played any part in</p> <p>10 causing or contributing to cause his injury in any</p> <p>11 kind of way?</p> <p>12 A No, sir.</p> <p>13 Q Did he ever indicate that he tripped or slipped or</p> <p>14 fell in any kind of way?</p> <p>15 A No, sir.</p> <p>16 Q Did he ever indicate to you that he complained of</p> <p>17 hurrying or the circumstances under which they</p> <p>18 were doing their work at all?</p> <p>19 A No, sir.</p> <p>20 Q Now, you indicated that you wrote down something</p> <p>21 about not bending his knees.</p> <p>22 Did Dane, the mate, indicate that he had seen</p> <p>23 Mr. Ruddell hand him the wire?</p> <p>24 A Yes. He had seen him bend over at the waist.</p>	<p style="text-align: right;">Page 56</p> <p>1 A I do not recall him saying that he bent by his</p> <p>2 waist.</p> <p>3 Q Okay. You indicated, I think, that it has been</p> <p>4 your policy and Marathon's policy never to work in</p> <p>5 lightening for as long as you have been with the</p> <p>6 company?</p> <p>7 A Yes, sir. And that's just common, what they call,</p> <p>8 good seamanship practice.</p> <p>9 Q All right. You are not saying that that is</p> <p>10 written down in writing someplace in a manual or</p> <p>11 something; you are not saying that?</p> <p>12 A No, sir.</p> <p>13 Q But there are some references in some policy</p> <p>14 manuals dealing with discretion to use additional</p> <p>15 people, et cetera, under certain weather</p> <p>16 conditions, is that right?</p> <p>17 A Yes, sir.</p> <p>18 MR. O'BRYAN: I'm going to object</p> <p>19 under Rule 1001, the best evidence rule,</p> <p>20 because I have not seen this thing that you</p> <p>21 are talking about.</p> <p>22 MR. RAYMOND MASSEY: Okay. I'll</p> <p>23 rephrase the question.</p> <p>24 Q Assuming, Captain, that there is an area in the</p>
<p style="text-align: right;">Page 55</p> <p>1 Q And bending over at the waist, is that a violation</p> <p>2 of a safety rule at Marathon?</p> <p>3 A Yes, sir.</p> <p>4 Q And why is that, sir?</p> <p>5 A Because you can hurt your back that way.</p> <p>6 Q What are you supposed to do?</p> <p>7 A Bend with your knees.</p> <p>8 Q And what does that mean, "bend with your knees"?</p> <p>9 A Just like squatting with your knees and keeping</p> <p>10 your back straight.</p> <p>11 Q Does it mean you are supposed to spread your legs,</p> <p>12 bend your knees so that when you lift anything you</p> <p>13 are lifting with your knees rather than your back?</p> <p>14 A Yes, sir.</p> <p>15 Q Is that to prevent back strains?</p> <p>16 A Yes, sir.</p> <p>17 Q And sprains?</p> <p>18 A Yes, sir.</p> <p>19 Q Given the information that you got from</p> <p>20 Mr. Dane -- from Dane, the mate, is it your view</p> <p>21 that Mr. Ruddell violated a safety rule at</p> <p>22 Marathon?</p> <p>23 A Yes, sir.</p> <p>24 Q Did Mr. Ruddell admit that he bent from his waist?</p>	<p style="text-align: right;">Page 57</p> <p>1 policies that say something to the effect --</p> <p>2 MR. O'BRYAN: Why don't you give it</p> <p>3 to him and so I can look at it, too.</p> <p>4 MR. RAYMOND MASSEY: Hold the</p> <p>5 thought.</p> <p>6 Q -- "Exception: In certain circumstances (for</p> <p>7 example inclement weather) the boat captain and/or</p> <p>8 pilot may use their discretion and increase the</p> <p>9 number of required personnel to perform the tasks</p> <p>10 outlined in this document."</p> <p>11 Have you heard that language before, Captain?</p> <p>12 A Yes, sir.</p> <p>13 Q Is that what you meant by policies about</p> <p>14 discretion in inclement weather, for example?</p> <p>15 Is that what you meant by that?</p> <p>16 A Yes, sir.</p> <p>17 MR. O'BRYAN: What number are we</p> <p>18 looking at?</p> <p>19 MR. RAYMOND MASSEY: Just for the</p> <p>20 record, that language is contained in Bates</p> <p>21 stamped Document 1795, among other places.</p> <p>22 But the other places I think the wording is</p> <p>23 very much the same if not the same.</p> <p>24 BY MR. RAYMOND MASSEY:</p>

<p style="text-align: right;">Page 58</p> <p>1 Q So, Captain, the boat captain and/or the crew, for 2 example, if there is inclement weather they have 3 discretion in whether or not to work in it or not? 4 A Yes, sir. 5 Q And what would be the determinant factors? Would 6 safety be the determinant factor? 7 A Yes, safety would be. 8 Q And is that one of the reasons that you, yourself, 9 and Marathon has the policy that you do not work 10 out on steel decks if it is lightening? 11 A Yes. 12 Q And on this day any lightening that was in the 13 area occurred after the crew had already finished 14 their job and were back inside the boat? 15 A Yes, sir. 16 Q Do you have a visualized picture of this tow in 17 front of the vessel in your mind, Captain? 18 A Yes, sir. 19 Q If the last tie-off was done at the second 20 coupling from the head, which would be the first 21 coupling from the boat -- 22 A Yeah. 23 Q -- would the cameras that are centered on the boat 24 or alongside the boat even have been able to see</p>	<p style="text-align: right;">Page 60</p> <p>1 Q So you could see about one barge length. But then 2 because of the rainfall, if it was an inch an 3 hour, it was raining hard enough so you couldn't 4 see beyond that, it was obscured somewhat? 5 A Yes, sir. 6 Q Is that what you meant by that? 7 A Yes, sir. 8 Q There was also some mention about videos and 9 taking videos off the vessel. Do you remember 10 that testimony, sir? 11 A Yes, sir. 12 Q In the notes that were from Mr. Perkins' notes he 13 indicated something about pulling Mike's videos or 14 something. What was meant by that, in your 15 judgment? 16 A Pulling Mike's videos would have showed 17 Ryan Ruddell getting off the boat and if he had 18 been -- it could have showed if he was walking 19 differently or whatever, if he was in pain. 20 Q Is that because at Mike's facility, which is a 21 marine facility there in the area, that they have 22 -- they have cameras at their facility that would 23 show their walkways? 24 A Yes, sir. They have surveillance cameras.</p>
<p style="text-align: right;">Page 59</p> <p>1 any action of the crew at that coupling? 2 A No, sir. Due to the configuration of the barge, 3 it be wouldn't have picked it up. 4 Q All right. And what that means is, because of the 5 way the barges are structured in connection with 6 the gunnel, or the walkway, where the crew were in 7 an area where the cameras would not be able to 8 observe their actions; is that what you mean by 9 that? 10 A Yes. 11 Q And is that the reason you were not able to 12 visualize the crew as they were doing the work in 13 that location? 14 A Yes, sir. 15 Q Now, in fairness, at certain times it was raining 16 hard enough so your visibility was limited 17 somewhat? 18 A Yes, sir. 19 Q And what is your estimate of how far you could see 20 out from the wheelhouse at the most significant 21 rainfall? 22 A About a hundred -- 300 feet. 23 Q About one barge length? 24 A Yes, sir.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q You don't have any knowledge one way or another if 2 anybody ever actually pulled them off or looked at 3 them or anything like that? 4 A No, sir. 5 Q And the knowledge you would have about the 6 wheelhouse videos, those are not CDs like 7 Mr. O'Bryan was referencing to take in and out, 8 those were videos that were broadcast back at the 9 office for the port captains to take a look at 10 live, or do you even know? 11 A It's about box that we can't get into which 12 records the videos. I do not have access into 13 getting it in there to pull up videos, but the 14 port captains do. They can pull it up remotely 15 from the office. 16 Q Okay. But even if you had a video on this 17 particular day at this particular time, the videos 18 wouldn't have shown the operation where they were 19 doing it the last place they were doing it before 20 they got off the tow anyway? 21 A No, sir. You wouldn't have been able to make it 22 out or see it. 23 Q All right. Let's talk about the next morning 24 after this incident on the 27th. You observe</p>

<p style="text-align: right;">Page 62</p> <p>1 Mr. Ruddell that next morning; is that true, sir?</p> <p>2 A Yes, sir.</p> <p>3 Q He came up to do the stretching exercises that you</p> <p>4 all do before you go out on watch?</p> <p>5 A Yes, sir, stretching and shift starter.</p> <p>6 Q Okay. At that time or in close proximity after</p> <p>7 that it got reported to you that there was some</p> <p>8 kind of an incident?</p> <p>9 A Yes, sir.</p> <p>10 Q And that's when you began to fill out the report,</p> <p>11 some of which he have talked about here today?</p> <p>12 A Yes, sir.</p> <p>13 Q And some of which were marked as exhibits here</p> <p>14 today?</p> <p>15 A Yes, sir.</p> <p>16 Q At any time in any of that discussion did</p> <p>17 Mr. Ruddell mention anything about any wires being</p> <p>18 bad?</p> <p>19 A No, sir.</p> <p>20 Q Or any problems with any wires?</p> <p>21 A No, sir.</p> <p>22 Q Or any weather having anything to do whatsoever</p> <p>23 with any incident that occurred to him?</p> <p>24 A No, sir.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q And those were working on big line boats as well?</p> <p>2 A Medium size.</p> <p>3 Q All right. How big is the Nashville? What kind</p> <p>4 of horsepower?</p> <p>5 A It is a 150 foot long, 45 foot wide, and it is now</p> <p>6 5,000 horsepower.</p> <p>7 Q And all of the boats at Mid-South, were they</p> <p>8 5,000's or 5,600's or what were they?</p> <p>9 A No, sir. We had anywhere from 1,000 horsepower to</p> <p>10 9,000.</p> <p>11 Q And you worked on all of them?</p> <p>12 A Yes, sir.</p> <p>13 Q What licenses do you have that are issued by the</p> <p>14 United States Coast Guard?</p> <p>15 A I have western rivers master's and I have inland.</p> <p>16 Q You have inland operators and you have master's</p> <p>17 license?</p> <p>18 A I have western river master; I have inland mate</p> <p>19 pilot license.</p> <p>20 Q Okay. And you are considered to be a master</p> <p>21 pilot?</p> <p>22 A On the western rivers.</p> <p>23 Q Yes. That is the highest license you can have on</p> <p>24 the western rivers?</p>
<p style="text-align: right;">Page 63</p> <p>1 Q Or that he was feeling hurried or that anyone had</p> <p>2 told him to hurry?</p> <p>3 A No, sir.</p> <p>4 Q Captain, you have been at Marathon for about eight</p> <p>5 years. But before that you worked on the river?</p> <p>6 A Yes, sir.</p> <p>7 Q Who did you work with, sir?</p> <p>8 A I worked for Mid-South Towing.</p> <p>9 Q And Mid-South Towing is a towing company out of</p> <p>10 Tampa, Florida; is that where they are</p> <p>11 headquartered or do you know?</p> <p>12 A Yeah. That's TECO.</p> <p>13 Q Okay.</p> <p>14 A Tampa Electric owned -- owned Mid-South Towing.</p> <p>15 Q I got you. So you worked on big line boats for</p> <p>16 Mid-South?</p> <p>17 A Yeah, for 22 years.</p> <p>18 Q So altogether, then, that is 30 years worth of</p> <p>19 wheelhouse experience?</p> <p>20 A A bit part, about half of it.</p> <p>21 Q Okay. So before Mid-South, who did you work for?</p> <p>22 A I worked for ago Eggert and Walker Towing.</p> <p>23 Q Okay. Out of Paducah, Kentucky?</p> <p>24 A Yes, sir.</p>	<p style="text-align: right;">Page 65</p> <p>1 A Mine is only 500 gross ton. You can get up to</p> <p>2 unlimited.</p> <p>3 Q Okay. If you are navigating on the Great Lakes,</p> <p>4 et cetera?</p> <p>5 A Well, the unlimited would be where you could</p> <p>6 operate like the Delta Queen or...</p> <p>7 Q I got you. Pleasure crafts, that sort of thing?</p> <p>8 A Gambling boats that used to run.</p> <p>9 Q Yeah. Is the practice that you and Marathon have</p> <p>10 concerning working under the weather conditions</p> <p>11 that you have described, are they in accordance</p> <p>12 with the custom and practice generally in the</p> <p>13 marine business?</p> <p>14 A Yes, sir.</p> <p>15 MR. RAYMOND MASSEY: Thank you,</p> <p>16 Captain. That's all I have.</p> <p>17 THE WITNESS: All right. Thank</p> <p>18 you.</p> <p>19 MR. RAYMOND MASSEY: Do you want to</p> <p>20 mark these as exhibits, Dennis?</p> <p>21 MR. O'BRYAN: Yeah. I've got a</p> <p>22 couple more questions based on your cross.</p> <p>23 MR. RAYMOND MASSEY: Okay.</p> <p>24 =====</p>

<p style="text-align: right;">Page 66</p> <p>1 RE-EXAMINATION</p> <p>2 BY MR. O'BRYAN:</p> <p>3 Q Now, Captain, defense counsel's asked you in a few</p> <p>4 different ways whether the crew members had to</p> <p>5 hurry. Do you recall those questions?</p> <p>6 A Yes, sir.</p> <p>7 Q Let's just call that the "hurry up factor," okay?</p> <p>8 A Okay.</p> <p>9 Q And the hurry up factor was one of the things that</p> <p>10 you discussed with defense counsel in this hour</p> <p>11 and a half meeting that you had with them</p> <p>12 yesterday?</p> <p>13 A Yes, sir.</p> <p>14 Q And you recognize that if a crew is being hurried</p> <p>15 that that can increase the chances of injury,</p> <p>16 isn't that correct?</p> <p>17 A Yes, sir.</p> <p>18 Q And that can increase the chances of the crew</p> <p>19 taking shortcuts to get their work done if they</p> <p>20 are being unnecessarily hurried, isn't that</p> <p>21 correct?</p> <p>22 A That would be up to them, if they take shortcuts.</p> <p>23 Q I know. But if they are being hurried up, I mean,</p> <p>24 that could increase the likelihood of that?</p>	<p style="text-align: right;">Page 68</p> <p>1 Q Now, had you observed lightening prior to this</p> <p>2 6:45 time where the injury is said to have</p> <p>3 occurred, what would you have done?</p> <p>4 A If I would have observed lightening at that point</p> <p>5 in time, I would have stopped everything and</p> <p>6 pulled my crew off the tow.</p> <p>7 Q And the same with the bad rain, correct?</p> <p>8 MR. RAYMOND MASSEY: Object to the</p> <p>9 form of the question. It is vague and</p> <p>10 ambiguous. Go ahead, sir.</p> <p>11 A I've worked in heavy rain; they've worked in heavy</p> <p>12 rain. That's just part of the job.</p> <p>13 Q I'm just talking about, though, you indicated</p> <p>14 earlier that lightening and, you know, really bad</p> <p>15 rain could cause you to suspend operation. Do you</p> <p>16 recall that? Or you can clarify it if you want.</p> <p>17 A Okay. When you are talking about real bad rain</p> <p>18 for me to stop, that means I cannot use my radars,</p> <p>19 they're blacked out and stuff, so I have to stop</p> <p>20 because I cannot navigate.</p> <p>21 Q What about rain and wind so bad that it is blowing</p> <p>22 crews across the barge; would that qualify?</p> <p>23 A Yes, sir.</p> <p>24 Q All right. Now, Mr. Ruddell said that there was</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. RAYMOND MASSEY: Let me object</p> <p>2 to the form of the question.</p> <p>3 Q Do you agree with that?</p> <p>4 MR. RAYMOND MASSEY: That's calling</p> <p>5 for a hypothetical, I think.</p> <p>6 Q Can you answer it?</p> <p>7 A I don't agree with that. I mean, there's a</p> <p>8 difference between just being totally rushed or</p> <p>9 picking up the pace just a little bit.</p> <p>10 Q Okay. Let's say being rushed. How can that</p> <p>11 increase the chances of injury?</p> <p>12 A That could increase it some, yes.</p> <p>13 Q In what way?</p> <p>14 A If they get in too big of a hurry they could, you</p> <p>15 know, slip, trip over something or get in too big</p> <p>16 of a rush they could get hurts.</p> <p>17 Q Or just do things they shouldn't know how to do?</p> <p>18 A Once again, I cannot control what the other person</p> <p>19 does.</p> <p>20 Q Okay. Now, have you observed -- okay. So you</p> <p>21 indicated earlier when I was asking you some</p> <p>22 questions with lightening or real bad rain, that</p> <p>23 you would suspend operations, right?</p> <p>24 A Yes, sir.</p>	<p style="text-align: right;">Page 69</p> <p>1 no rain gear that would fit him on the boat; would</p> <p>2 you agree, disagree, or do not know?</p> <p>3 A That, I would not know. That's up to the mate to</p> <p>4 make sure the proper rain gear is on the boat for</p> <p>5 crew.</p> <p>6 Q Did Mr. Ruddell tell you that his injury occurred</p> <p>7 while he was lifting a wire -- lifting a wire?</p> <p>8 A Yes. That's what he told me.</p> <p>9 Q I don't know if you can hear me, but I'm going to</p> <p>10 call on the phone. All right. I got you now.</p> <p>11 Okay. Now, can you stand up and show me the</p> <p>12 proper way that you're supposed to do lifting with</p> <p>13 your legs that you are talking about?</p> <p>14 A (Witness so complies).</p> <p>15 MR. RAYMOND MASSEY: Let the record</p> <p>16 reflect that the Captain bent his knees, kept</p> <p>17 his back straight, and raised straight up.</p> <p>18 MR. O'BRYAN: The picture shows</p> <p>19 what it shows.</p> <p>20 MR. RAYMOND MASSEY: Yeah, but it</p> <p>21 is not a video deposition. So you didn't</p> <p>22 arrange for a video deposition, so you won't</p> <p>23 be able to see it, so somebody needs to</p> <p>24 describe it. So I have just described it.</p>

<p style="text-align: right;">Page 70</p> <p>1 Let the record show the Captain</p> <p>2 bent his knees, kept his back straight, went</p> <p>3 straight down and with his arms lifted.</p> <p>4 BY MR. O'BRYAN:</p> <p>5 Q And your legs are pretty much together as much as</p> <p>6 you can, right?</p> <p>7 MR. RAYMOND MASSEY: No. In fact,</p> <p>8 they weren't together.</p> <p>9 A Actually, they are separate just a little bit.</p> <p>10 Q Just a little bit?</p> <p>11 MR. RAYMOND MASSEY: Shoulder</p> <p>12 width. If it had been on video, it would</p> <p>13 show it is at least at shoulder width.</p> <p>14 MR. O'BRYAN: Right.</p> <p>15 MR. RAYMOND MASSEY: Which is the</p> <p>16 proper way.</p> <p>17 BY MR. O'BRYAN:</p> <p>18 Q Now, in order to squat like that you can't have</p> <p>19 your feet too far apart, isn't that correct?</p> <p>20 A Yeah. If you put them way, way far apart, you</p> <p>21 don't want to lift like that.</p> <p>22 Q Now, I was looking at this thing in seventeen --</p> <p>23 number 1795, this policy statement or whatever you</p> <p>24 want to call it.</p>	<p style="text-align: right;">Page 72</p> <p>1 A Yes, sir.</p> <p>2 Q And as a deckhand, Mr. Ruddell is pretty much at</p> <p>3 the bottom of the food chain in terms of taking --</p> <p>4 or giving orders, is that correct?</p> <p>5 MR. RAYMOND MASSEY: We couldn't</p> <p>6 hear. You have to re-ask that.</p> <p>7 Q Well, what is the hier -- just tell me the</p> <p>8 hierarchy with regard to Mr. Ruddell.</p> <p>9 A I'm the captain, I'm the leader of the vessel, and</p> <p>10 Ryan is the deckhand, which is the lowest part of</p> <p>11 the chain of command.</p> <p>12 Q All right. Now, the cameras and videos that we're</p> <p>13 talking about here, they would have possibly</p> <p>14 recorded when lightening was visible by the pilot</p> <p>15 house, correct?</p> <p>16 A Yes, sir.</p> <p>17 Q Now, how many barge lengths in front of you was</p> <p>18 Mr. Ruddell when this was occurring?</p> <p>19 A What was occurring, sir?</p> <p>20 Q When he was lifting the wire.</p> <p>21 A That was one barge length out, 300 feet.</p> <p>22 Q Now, you have just told defense counsel that you</p> <p>23 could see one barge length out, correct?</p> <p>24 A The barge, yes.</p>
<p style="text-align: right;">Page 71</p> <p>1 And that doesn't have anything to do with you</p> <p>2 suspending operations under lightening or those</p> <p>3 type of conditions; that has to do with assigning</p> <p>4 personnel to perform a task, isn't that correct?</p> <p>5 A Assigning more people, yes.</p> <p>6 Q You're cutting out. But that doesn't have</p> <p>7 anything to do with you suspending operations</p> <p>8 under lightening conditions, is that correct?</p> <p>9 MR. RAYMOND MASSEY: I think his</p> <p>10 answer was "assigning" -- the court reporter</p> <p>11 will read it back.</p> <p>12 THE REPORTER: The answer was:</p> <p>13 "Assigning more people, yes."</p> <p>14 MR. RAYMOND MASSEY: Did you hear</p> <p>15 that, Dennis?</p> <p>16 MR. O'BRYAN: Right. Yeah, yeah.</p> <p>17 The problem I'm having is it is breaking up a</p> <p>18 little bit.</p> <p>19 BY MR. O'BRYAN:</p> <p>20 Q Okay. And as the Captain you are the person in</p> <p>21 command of your vessel, correct? You are the top</p> <p>22 of the food chain?</p> <p>23 A Yes, sir.</p> <p>24 Q And the safety of the crew is your responsibility?</p>	<p style="text-align: right;">Page 73</p> <p>1 Q But in the document you filled out that we've</p> <p>2 already talked about a little bit you said that</p> <p>3 your visibility -- you couldn't see them in part</p> <p>4 because of the severity of the rain that was</p> <p>5 coming down, isn't that correct?</p> <p>6 A Due to the rain was part of it, yes.</p> <p>7 Q So which way is it, you could see out to where he</p> <p>8 was or that length or you could not?</p> <p>9 A I could see out 300 foot to the edge of the</p> <p>10 coupling. But where Mr. Ruddell was at I could</p> <p>11 not see him because he was in behind the trunk of</p> <p>12 the barge and the header pipes.</p> <p>13 Q But that's not what you put in your witness</p> <p>14 statement, is it?</p> <p>15 MR. RAYMOND MASSEY: Which one do</p> <p>16 you want him to look at?</p> <p>17 MR. O'BRYAN: Number 11.</p> <p>18 MR. RAYMOND MASSEY: Bates stamped</p> <p>19 11, you mean?</p> <p>20 MR. O'BRYAN: Yeah. Sorry.</p> <p>21 MR. RAYMOND MASSEY: That's all</p> <p>22 right.</p> <p>23 (Witness reviews document)</p> <p>24 BY MR. O'BRYAN:</p>

<p style="text-align: right;">Page 74</p> <p>1 Q In your witness statement you said, "Wheelhouse 2 couldn't see what was going on. Was raining 3 hard." Is that correct?</p> <p>4 A Yes, sir.</p> <p>5 Q All right. And you indicated that Mr. Ruddell 6 didn't say anything about the weather playing a 7 role in his injury, correct?</p> <p>8 A Correct.</p> <p>9 Q But in his report of injury, 003, he did say that 10 there was heavy rain and thunderstorms, isn't that 11 correct?</p> <p>12 MR. RAYMOND MASSEY: Let me just 13 object to the form. It speaks for itself. 14 But go ahead, Captain. I'll show him 003.</p> <p>15 MR. O'BRYAN: All right.</p> <p>16 A Yes, the form says "heavy rain and thunderstorms." 17 MR. O'BRYAN: All right. I have 18 nothing further.</p> <p>19 MR. RAYMOND MASSEY: I don't have 20 anything further, either, Dennis.</p> <p>21 MR. O'BRYAN: All right.</p> <p>22 MR. RAYMOND MASSEY: Do you want to 23 just not mark these exhibits and go with the 24 Bates stamp numbers?</p> <p style="text-align: right;">Page 75</p> <p>1 MR. O'BRYAN: It would be nice if 2 we could mark them, I guess, and make it a 3 little easier.</p> <p>4 (Discussion held off the record)</p> <p>5 (Exhibit 1 marked)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 76</p> <p style="text-align: center;">REPORTER'S CERTIFICATE</p> <p>2 STATE OF KENTUCKY) 3 COUNTY OF FAYETTE) 4</p> <p>5 I, LISA M. SCHWARZE (LARSON), FCRR, RPR, and 6 Notary Public in and for the Commonwealth of Kentucky 7 at Large, do hereby certify that the facts as stated 8 by me in the caption hereto are true; that the 9 foregoing answers in response to the questions as 10 indicated were made before me by the witness 11 hereinbefore named, after said witness had first been 12 duly placed under oath, and were thereafter reduced 13 to computer-aided transcription by me and under my 14 supervision; and that the same is a true and accurate 15 transcript of the proceedings to the best of my 16 ability.</p> <p>17 I further certify that I am not employed by, 18 related to, nor of counsel for any of the parties 19 herein, nor otherwise interested in the outcome of 20 this action.</p> <p>21 IN WITNESS WHEREOF, I have affixed my 22 signature and seal this 18th day of July, 2016.</p> <p>23  24 LISA M. SCHWARZE, FCRR, RPR Notary Public, State-at-Large Notary ID 489705</p> <p>My Commission Expires: June 13, 2017</p> <p style="text-align: right;">Page 77</p> <p style="text-align: center;">ERRATA SHEET</p> <p>2 I, CAPTAIN MICHAEL WAYNE SCOTT, hereby certify 3 that I have read the foregoing transcript, and 4 that the same is a true and accurate transcription 5 of my testimony, except as noted below:</p> <table border="1"> <thead> <tr> <th>PAGE</th> <th>LINE NO.</th> <th>CHANGE</th> <th>REASON FOR CHANGE</th> </tr> </thead> <tbody> <tr><td>6</td><td></td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> </tbody> </table> <p style="text-align: right;">CAPTAIN MICHAEL WAYNE SCOTT</p> <p>20 STATE OF _____) 21 COUNTY OF _____)</p> <p>22 Subscribed and sworn to me on this ____ day of 23 _____, 2016.</p> <p>24 _____ Notary Public</p> <p>My Commission Expires:</p>	PAGE	LINE NO.	CHANGE	REASON FOR CHANGE	6				7				8				9				10				11				12				13				14				15				16				17				18				19				20				21				22				23				24			
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Exhibits	17:30 41:10 18:30 18:3 43:2 18:45 16:4 42:18 190 42:12 196 42:13	5,000's 64:8 5,600's 64:8 500 65:1 5:30 10:24 12:9,15 13:6,9,10,13	9,000 64:10 9/1 45:24 9/2 46:1	and/or 57:7 58:1 Anthony 30:11 app 28:11,16,19, 21,24 29:3,5
EX 0001 M. Scott 071316 4:12 75:5				apparent 38:5
0	2	6	A	apparently 46:6 appearance 19:19
00 36:20	2 45:21	637 45:22	ability 33:7	appears 53:8
003 8:7 33:9 34:11, 16 74:9,14	2014 5:15 6:2 15:21 25:7 26:8	638 45:22	abnormal 33:6	apps 6:21 27:23 28:6 29:19,21
006 8:7	22 63:17	639 44:6,8	access 21:2 22:19 25:11,19 27:24 61:12	area 15:8 16:11 33:2 38:14 49:3 53:1,19 56:24 58:13 59:7 60:21
06 27:9 30:7 36:22	25 49:15	640 44:7	accident 22:5,12 26:24 34:12	argumentative 11:16
0643 8:7	27th 5:15 6:2 15:21 25:6 26:8 53:24 61:24	641 44:3	accidents/ incidences 22:1	arms 70:3
0711 8:8	28th 54:1	642 43:20	accordance 65:11	arrange 69:22
1	3	643 39:24 46:5,10	action 59:1	arrived 49:12
1 45:21 75:5	30 49:15 63:18	6:25 25:6	actions 59:8	aspect 38:4
1,000 64:9	300 59:22 72:21 73:9	6:45 16:5,6 18:2, 18 19:5 20:12,14 26:8 33:16,17,23 40:3 47:9 68:2	additional 56:14	assigning 71:3, 5,10,13
1001 56:19	30th 44:8	6:55 33:20,23 34:9	adjust 27:22	association 35:12
11 31:1 39:18,19 73:17,19	31 44:9	7	admit 55:24	assumed 42:18
11:02 a.m 51:11	32 35:10	719 8:9	adverse 36:2	Assuming 56:24
11:05 40:10	339 8:9 10:9	722 8:9	affected 47:8	attention 22:10
11:09 a.m 51:11	340 8:9	729 26:20,22 36:20	afternoon 11:1, 20,24 12:15 13:6	August 5:15 6:2 15:21 25:6 26:8 44:8,9
12 31:6	3:40 21:3	8	agree 13:7 18:18 19:5 33:14 67:3,7 69:2	back 15:22 16:23 18:9 32:14,19 33:18,19 34:8 36:18 38:7,12 47:23 49:13 50:3,18 55:5,10,13, 15 58:14 61:8 69:17 70:2 71:11
13 32:23	4	8/27 46:5,12	ahead 10:15 11:16 12:5 19:2,8 24:15 31:23 35:9 38:10 40:9 46:23 68:10 74:14	B
14th 25:6	4 32:4	8/28 43:20 44:11 45:24	airplane 25:23	backing 21:18
15 30:11	45 64:5	8/29 44:3,11 45:24	alongside 58:24	
150 64:5	5	8/30 44:7,11 45:24	altogether 63:18	
15:30 40:19,20	5 20:6	8/31 44:11 45:24	ambiguous 15:13 18:23,24 35:9 37:6 38:10 68:10	
16:40 40:4	5,000 64:6	9	amount 52:13	
17 30:15,16		9 30:12		
1795 57:21 70:23				
17:05 40:23 41:4				